



## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Proposed 2025 Provo River Project Marketing Plan

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed 2025 Provo River project marketing plan and announcement of public information and comment forum.

**SUMMARY:** Western Area Power Administration (WAPA), a federal Power Marketing Administration of the Department of Energy (DOE), is seeking comments on this proposed 2025 Provo River Project (PRP) Marketing Plan, including the general power marketing criteria to be used as the basis for marketing the hydroelectric generation of the PRP. The current PRP Marketing Plan expires September 30, 2024, and the proposed 2025 PRP Marketing Plan would take effect October 1, 2024.

**DATES:** The public comment period on the Proposed 2025 PRP Marketing Plan begins **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** and ends **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. To be assured of consideration, WAPA must receive all written comments by the end of the comment period.

WAPA will hold a virtual public information forum about this proposed marketing plan on Thursday, June 28, 2022, from 9:30 a.m. to 12:00 p.m. MDT. The virtual public comment forum is scheduled the same day, Thursday, June 28, 2022, beginning at 1:00 p.m. MDT and concluding when comments are complete, or no later than 4:00 p.m. MDT. Due to the COVID-19 pandemic, neither the public information nor comment forums will be held in-person. Information on the virtual meeting may be found on the Colorado River Storage Project (CRSP) website at: <https://www.wapa.gov/regions/CRSP/PowerMarketing/Pages/power-marketing.aspx>. WAPA will post webinar and dial in information at this link 14 days before the scheduled

forums.

**ADDRESSES:** Submit written comments about this proposed marketing plan to: Mr. Rodney Bailey, Acting CRSP Manager, CRSP Management Center (MC), Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401. Comments also may be e-mailed to *Provo-Marketing@wapa.gov* or be faxed to 970-240-6282. All documentation developed or retained by WAPA for the purpose of developing the proposed marketing plan is available for inspection and copying at the CRSP MC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randolph Manion, CRSP Contracts and Energy Services Manager, *Manion@wapa.gov*, 720-201-3285. Written requests for information should be mailed to CRSP MC at the **ADDRESSES** section.

**SUPPLEMENTARY INFORMATION:** WAPA is responsible for marketing power from the PRP, which is done independently from the other projects marketed by WAPA's CRSP, including the Salt Lake City Area Integrated Projects (SLCA/IP), Olmsted Project, and the Falcon-Amistad Project. In addition to marketing power from the PRP and other projects, WAPA's CRSP operates approximately 2,316 miles of transmission line and associated infrastructure related to these federal hydroelectric projects across Arizona, New Mexico, Colorado, Utah, and Wyoming. This *Federal Register* notice formally initiates WAPA's public process and request for public comments on the proposed 2025 PRP Marketing Plan. WAPA will prepare and publish the final 2025 PRP Marketing Plan after public comments on the proposed marketing plan are considered. This *Federal Register* notice is not a call for applications. A call for applications from those interested in an allocation of PRP power will occur in a future *Federal Register* notice.

The PRP is a small water development project, with a powerplant, in northern Utah. It was authorized by President Franklin D. Roosevelt, in part, as a response to the Great Depression and a severe drought that devastated Utah's agriculture and threatened municipal water supplies in the 1930s. PRP's primary function is to provide irrigation, municipal, and industrial water to users

in Salt Lake and Utah Counties, Utah. The Department of the Interior, Bureau of Reclamation (Reclamation) finished construction of the Deer Creek Dam in 1938 and the Deer Creek Powerplant in 1958, which included two 2.475-megawatt generators. On June 27, 1936, Reclamation signed contract number Ilr-874 making the Provo River Water Users' Association (PRWUA) the operator of the dam and responsible for repayment of the PRP. The initial investment in the power facilities was repaid in 1984 but there are ongoing costs associated with operation, maintenance, and replacement (OM&R) of equipment. Surplus power revenues may be used to aid the repayment of the PRP irrigation investment.

Between October 15 and April 15, water may be diverted from the adjacent Weber River Basin into the Provo River and stored in Deer Creek Reservoir for irrigation purposes pursuant to the terms of the 1938 contract number Ilr-1082 between the PRWUA, PacifiCorp (formerly Utah Power and Light Company), and Reclamation, among others. The diversion creates a loss of power generation at the Weber Powerplant on the Weber River, downstream from the diversion. As a result, PacifiCorp, the owner of the Weber Powerplant, is reimbursed for its winter energy losses with PRP energy (Weber/Provo Water Exchange). During this winter period, PRP generation above the reimbursement amount is sold to WAPA's CRSP as non-firm surplus energy; during the summer period, PRP generation is sold to WAPA's CRSP as firm energy.

### **Current Marketing Plan Background**

Under the Final Provo River Project Marketing Plan published in the *Federal Register* November 21, 1994 (59 FR 60007), WAPA markets PRP power and energy, independent from the SLCA/IP, to eight preference entities including Heber City, Lehi, Springville, Strawberry Electric Service District, and Payson through Intermountain Consumers Power Association (in 1995, WAPA's contract with Intermountain Consumers Power Association was transferred to Utah Associated Municipal Power Systems); and Provo, Salem, and Spanish Fork through the Utah Municipal Power Agency, hereinafter referred to as Customers.

Under the current Marketing Plan, PRP is a "take all, pay all" contractual arrangement, i.e.,

the annual revenue requirement is not dependent upon the amount of marketable energy available each year. Customers with an allocation pay their share of all PRP annual OM&R costs, including a separate annual payment to Reclamation for the PRP irrigation investments, in return for receiving all marketable energy produced by PRP each year. For additional information, see the February 14, 2020 *Federal Register* Notice announcing the Provo River Project – Rate Order No. WAPA-189, Provisional Formula Rate PR-2, effective April 1, 2020, through March 31, 2025, (85 FR 8583) (“WAPA-189”).

### **Proposed 2025 Provo River Project General Power Marketing Criteria**

In the proposed 2025 PRP Marketing Plan, WAPA proposes to offer a resource extension to existing Customers, and to offer a portion of the resource to new applicants under the following general marketing criteria.

- A. *Marketing Area:* Due to the relatively small size of the resource and its operating characteristics, eligible applicants must be located within Utah and Wasatch counties, Utah.
- B. *Resource Extension and Resource Pool Allocations:* WAPA proposes to provide 95 percent of its available energy resource to existing Customers and to establish a resource pool up to 5 percent for new eligible applicants. WAPA will take into consideration all existing federal hydropower allocations an applicant is currently receiving when determining each allocation. Eligible applicants who receive an allocation from the Deer Creek Powerplant will receive a percentage of available annual winter (October – March) and summer (April – September) generation rather than fixed quantities of energy; percentages will be solely determined by WAPA. Historically, marketable energy has averaged 23,000,000 kilowatt-hours (kWh), with 15,000,000 kWh generated during the summer months, and the remaining 8,000,000 kWh from winter surplus energy. Most recently, PRP’s five-year net generation average is 23,500,000 kWh.
- C. *Preference Entities:* Municipalities, rural electric cooperatives, and political subdivisions

including irrigation or other districts, and other governmental organizations that have electric utility status by October 1, 2023, and federally recognized Native American tribes are all preference entities in accordance with section 9(c) of the Reclamation Project Act of 1939, as amended (43 U.S.C. 485h(c)). A Native American applicant must be an “Indian Tribe” as that term is defined in section 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 5304). “Electric utility status” means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase federal power from WAPA on a wholesale basis.

- D. *Ready, Willing, and Able:* Eligible applicants must be ready, willing, and able to receive and distribute or use energy from WAPA. “Ready, willing, and able” means the applicant has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service, and its power supply contracts with third parties permit the delivery of WAPA’s power.
- E. *Eligible Applicants:* Eligible applicants must qualify as preference entities, in accordance with section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c). WAPA will provide allocations only to preference entities in the marketing area. WAPA, through a separate public process, will determine the amount of energy, if any, to allocate in accordance with the marketing criteria and administrative discretion under Reclamation Law (e.g., Reclamation Act of 1902, 32 Stat. 388, as amended).
- F. *Contract Obligations:* Eligible applicants that receive an allocation must execute electric service contracts within 6 months of receiving a contract offer from WAPA, unless WAPA agrees otherwise in writing. Furthermore, the applicant must comply with all terms and conditions stated within that contract, including scheduling, accounting, and billing procedures; Energy Planning and Management Program requirements; General Power Contract Provisions; and power factor, among others.

- G. *Separate Contractual Arrangements with PacifiCorp*: Eligible applicants that receive an allocation must execute a separate multi-party agreement among WAPA, Reclamation, Central Utah Water Conservation District, PRWUA, and PacifiCorp to ensure repayment of energy to PacifiCorp for the loss of power generation due to the Weber/Provo Water Exchange.
- H. *Contract Term*: The term of the contract will be 10 years. Resource extensions and new allocations would begin on October 1, 2024, and remain in effect through September 30, 2034. However, the contract will automatically renew for up to two additional 5-year terms, commencing on October 1, 2034, and October 1, 2039, respectively, unless no later than 3 years before the beginning of an extension (by October 1, 2031, and October 1, 2036, respectively), any party to the contract gives written notice not to renew. If such notice is given, the automatic renewal option will be revoked, and all contracts will expire on September 30, 2034, or September 30, 2039, respectively.
- I. *Delivery Point*: PRP is electrically interconnected to PacifiCorp's 138-kilovolt (kV) transmission system (PacifiCorp's System). Eligible applicants taking delivery of power from WAPA must do so at the PacifiCorp System 138-kV Hale Powerplant Switchyard, South Provo Tap, or Spanish Fork Substation. Costs for transmission will be paid by the eligible applicants through appropriate contractual arrangements.
- J. *Transmission Beyond Delivery Point*: Any associated transformation/transmission beyond the PacifiCorp System 138-kV Hale Powerplant Switchyard, South Provo Tap, or Spanish Fork Substation is the sole responsibility of the eligible applicants. Eligible applicants that receive an allocation must have the necessary arrangements for transmission and/or distribution service in place by October 1, 2023.
- K. *Regional Transmission Organization*: Should PacifiCorp, as the balancing authority operator in the PRP area, join a full electricity market (e.g., a Regional Transmission Organization and/or an Independent System Operator), and in joining that market create

an unintended delivery point or point of receipt financial impact to the PRP and/or other unintended financial impacts, such financial impacts will be included as part of the PRP operation expenses, and WAPA will work with the Customers in good faith in an attempt to minimize those financial impacts.

L. *Rates and Payment:* PRP is a “take all, pay all” project. This means the annual revenue requirement does not depend on the amount of energy available each year. Each eligible applicant that receives an allocation will receive a proportional share of the energy and will annually pay a proportional share of the OM&R expenses, including a separate annual payment to Reclamation for the PRP irrigation investments, in 12 monthly installments. For additional information, see Rate Order No. WAPA-189.

### **Legal Authority**

WAPA is responsible for marketing the federal power produced by the PRP, as well as the other participating projects of CRSP, in accordance with the following Acts of Congress: Reclamation Act of June 17, 1902 (Pub. L. 57-161) (32 Stat. 388), Provo River Project of December 5, 1924 (43 Stat. 701), Revision of the Reclamation Act of August 4, 1939 (Pub. L. 76-260) (53 Stat. 1187), Colorado River Storage Project Act of April 11, 1956 (Pub. L. 84-485) (70 Stat. 105), Department of Energy Organization Act of August 4, 1977 (Pub. L. 95-91) (91 Stat. 565), as amended.

### **Availability of Information**

Documents developed or retained by WAPA during this public process will be available on CRSP’s website, by appointment, for inspection and copying at the CRSP MC at the ADDRESSES Section above. Written comments received as part of the Proposed 2025 PRP Marketing Plan formal public process will be available for viewing on CRSP’s website.

### **Regulatory Procedure Requirements**

A. *Review Under the National Environmental Policy Act (NEPA)*

WAPA has determined that this proposed action fits within the categorical exclusion listed in

appendix B to subpart D of 10 CFR part 1021 (B4.1 Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.<sup>1</sup> Specifically, WAPA has determined that this rulemaking is consistent with activities identified in part B4, Categorical Exclusions Applicable to Specific Agency Actions (see 10 CFR part 1021, appendix B to subpart D, part B4). A copy of the categorical exclusion determination is available on CRSP's website at:

<https://www.wapa.gov/regions/CRSP/environment/Pages/environment.aspx>.

#### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA) 5 U.S.C. 601 *et seq.*, requires a federal agency to perform a regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking for any proposed rule, unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, a “rule” does not include “a rule of particular applicability relating to rates [and] services...or to valuations, costs or accounting, or practices relating to such rates [and] services...” 5 U.S.C. 601. WAPA has determined that this action relates to services offered by WAPA and, therefore, is not a rule within the purview of the RFA.

#### *C. Determination Under Executive Order 12866*

WAPA has an exemption from centralized regulatory review under Executive Order 12866. Accordingly, no clearance of this notice by the Office of Management and Budget is required.

#### *D. Review Under Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), WAPA has received approval from the Office of Management and Budget to collect applicant profile data, under OMB control number 1910-5136.

---

<sup>1</sup> The determination was done in compliance with NEPA (42 U.S.C. 4321-4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).



## **Signing Authority**

This document of the Department of Energy was signed on [DATE], by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 24, 2022.

**Treena V. Garrett,**  
*Federal Register Liaison Officer,*  
*U.S. Department of Energy.*

[FR Doc. 2022-11476 Filed: 5/31/2022 8:45 am; Publication Date: 6/1/2022]